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MEDIMMUNE, LLC
Patrick Scott Alban
ONE MEDIMMUNE WAY
GAITHERSBURG MD 20878

MAILED

AUG 31 2010

OFFICE OF PETITIONS

In re Patent No. 7,582,297 : DECISION ON REQUEST
Jennifer Reed : FOR
Issue Date: September 1, 2009: RECONSIDERATION OF
Application No. 10/823,810 : PATENT TERM ADJUSTMENT
Filed: April 12, 2004 : and
Atty Docket No. IL500US : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 30, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand fifty-seven (1057) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand fifty-four (1054) days.

Patentee and the Office agree on the bases for correction of the patent term adjustment. However, patentee's calculations differ from the Offices. First, the over 3 year period is 873 days (not 872 days), counting the number of days beginning on April 13, 2007¹, the day after the date three years after the actual

¹ As stated in MPEP 2731,

When a period is indicated (in 37 CFR 1.703 or 1.704) as "beginning" on a particular day, that day is included in the period, in that such day is "day one" of the period and not "day zero." For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length.

filing date of the application, and ending on September 1, 2007, the date of issuance of the patent. Second, the period excluded for appellate review is 41 days (not 37 days), counting the number of days beginning on October 15, 2008, the date of filing of the notice of appeal, and ending on November 24, 2008, the date of mailing of a notice of allowance. Patentee and the Office both calculate the period of overlap as 69 days. Thus, the patent term adjustment is increased by 763 days (873 - 41 - 69) to 1054 days. (The period of 337 days entered at issuance for B delay is removed and the period of 763 days for B delay pursuant to this decision is entered).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand fifty-four (1054) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,582,297 B2

DATED : September 1, 2009

DRAFT

INVENTOR(S) : Reed

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 628 days

Delete the phrase "by 628 days" and insert – by 1054 days--